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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 268

GEORGE C. BENNETT,

Petitioner,

v.

JULIUS DE GEETER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES OF THE STATE OF NEW JERSEY.

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INDEX.

PAGE

Petition for Writ of Certiorari 1

Summary Statement of Matter Involved..... 1

Facts 4

Jurisdiction 4

Questions Presented 5

Reasons Relied on for the Allowance of the Writ. 6

TABLE OF CASES CITED:

Clark v. *Wooster*, 119 U. S. 323..... 2n

Collier v. *Collier* (N. J. Ch.), 33 Atl. 193 (not officially reported) 2n

Logan v. *Flatteau*, 73 N. J. Eq. 222..... 2n

Old Wayne Life Association v. *McDonough*, 204 U. S. 8 7

Pennoyer v. *Neff*, 95 U. S. 714..... 7

Poindexter v. *Greenhow*, 114 U. S. 270..... 7

San Giacomo v. *Oraton Inv. Co.*, 103 N. J. Eq. 273.. 1n

Scott v. *McNeal*, 154 U. S. 34..... 7

Soper v. *Conly*, 107 N. J. Eq. 537..... 2n

Twining v. *New Jersey*, 211 U. S. 110..... 7

Welsh v. *Bayard*, 21 N. J. Eq. 186..... 2n

OTHER AUTHORITIES CITED:

	PAGE
Constitution of the United States: Fourteenth Amendment	3, 4, 5, 6
Freeman on Judgments, 5th Ed., Vol. 2, page 1252.	2n
New Jersey Constitution: Article VI, Sec. I	1n
Note 19 L:R.A. (N. S.) 1064	2n
United States Code (Judicial Code, Section 237, as amended): Section 344 of Title 28	4
19 Am. Jur., Sec. 132	2n
30 Corpus Juris Secundum, Sec. 73 at page 427	2n
31 L. R. A. 70	7

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, above named, prays that a Writ of Certiorari issue to Review a Final Decision and Decree of the Court of Errors and Appeals in the Last Resort of All Causes of the State of New Jersey filed in the above case on May 24, 1943. Petition for Reargument was denied May 25, 1943.

SUMMARY STATEMENT OF MATTER INVOLVED.

Under the Constitution of the State of New Jersey the fundamental distinction between law and equity still prevails. The New Jersey courts of law function separately from the court of chancery of that State and the jurisdiction of each court is exclusive of the other.*

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* New Jersey Constitution Article VI, Sec. I; *San Giacomo* v. *Oraton Inv. Co.*, 103 N. J. Eq. 273.

In the instant matter, the New Jersey Court of Chancery has exceeded its jurisdiction as prescribed by the Constitution of that State by having determined the legal rights of the petitioner and by perpetually enjoining the prosecution of a prior pending action instituted by the petitioner in the New Jersey Supreme Court which under the State Constitution has exclusive jurisdiction to determine the legal issues raised therein.*

In December 1938, petitioner commenced an action at law in the New Jersey Supreme Court in which he sought damages for breach of contract pursuant to which the petitioner rendered valuable services to the respondent. The complaint at law (R., p. 39) contained two counts (1) for damages for breach of an express agreement and (2) for the reasonable value of petitioner's services upon *quantum meruit*. The respondent joined issue in the law action. The sufficiency, in law, of the complaint was thrice upheld by the law court (R., pp. 57, 60, 62).

In June 1941, the respondent, fearing the hazards of a jury trial (R., p. 35, ll. 1-10) undertook to change the forum wherein the matter would be adjudicated. An application for injunction was made by respondent to the Court of Chancery. The sole ground for the application for injunction being respondent's alleged fear that petitioner might prove in the action at law the existence of a partnership although respondent unequivocally denied the existence of such a relationship. Petitioner moved to strike the bill for injunction upon the ground that no equitable cause of action was set forth and that peti-

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* The established rule is that upon a denial of equitable relief, the Court of Chancery is without jurisdiction to decide legal issues which under the New Jersey Constitution are solely cognizable in the law courts of that State. *Soper* v. *Conly*, 107 N. J. Eq. 537; *Collier* v. *Collier* (N. J. Ch.), 33 Atl. 193 (not officially reported); *Logan* v. *Flatteau*, 73 N. J. Eq. 222, citing *Welsh* v. *Bayard*, 21 N. J. Eq. 186; *30 Corpus Juris Secundum*, Sec. 73, at page 427; *Freeman on Judgments*, 5th Ed., Vol. 2, page 1252; *Note 19 L.R.A.* (N. S.) 1064, at page 1064; *19 Am. Jur.*, Sec. 132, citing *Clark* v. *Wooster*, 119 U. S. 323.

tioner's complaint at law had been repeatedly sustained as cognizable at law (R., p. 54); when such motion was denied him, petitioner interposed a counterclaim or cross-bill (R., p. 67) in chancery under which he asked the court to construe the relationship between the parties and sought a dissolution and an accounting in the event the Chancellor found that a partnership or joint venture, in fact existed.

Upon final hearing of the suit in Chancery the Vice Chancellor decided that the relationship between petitioner and respondent was that of employee and employer and denied the petitioner the equitable relief prayed for under his counterclaim in the event that it should have been found that the relationship was a partnership, and yet on the other hand perpetually enjoined petitioner from prosecuting his prior pending action at law.

Petitioner appealed to the New Jersey Court of Errors and Appeals and on May 18, 1943 the said Court of Errors and Appeals, by a vote of 8 to 5 affirmed the decree of the Court of Chancery enjoining the prosecution of the action at law (R., p. 454).

Of the 5 members of the Court who dissented, one was the Chief Justice and 4 were Justices; of the 8 who voted to affirm, 3 were Justices and 5 were Lay Judges.

By this decision the Court of Errors and Appeals deprived the petitioner of any hearing whatever on the question of his legal rights as asserted in his prior pending action at law and permanently enjoined him from prosecuting the action at law and thereby deprived petitioner of his right to due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

Since the Court which issued the injunction and in which the only trial has been had is a court which had no jurisdiction under the Constitution of that State, its determination of petitioner's legal rights as asserted in the action at law deprives petitioner of the equal pro-

tection of the laws of the State of New Jersey and violates the due process of law clause of the Fourteenth Amendment of the Constitution of the United States.

Facts.

The petitioner was an experienced contractor and builder and had also operated skating rinks. He was well acquainted with sources of material and capable of supervising the construction work. The respondent was desirous of engaging in the skating rink business and to that end enlisted the services of the petitioner. The record is replete and conclusive as to petitioner's services which were rendered over a period of approximately twelve months and consisted of assisting in locating a site, grading it, preparing plans and material lists, ordering materials and supervising the construction of the rink. The respondent admitted that he did not pay the petitioner for these services, the explanation being that respondent "never had a chance to pay him" (R., p. 167; also R., p. 431).

It was to recover his compensation for these services that petitioner instituted his action in the New Jersey Supreme Court; but he is prevented from prosecuting said law action by reason of the injunction of the Court of Chancery which injunction has been affirmed by the New Jersey Court of Errors and Appeals as hereinbefore stated.

Jurisdiction.

This Petition for Certiorari is filed under Section 344 of Title 28 of United States Code (Judicial Code Section 237, as amended).

The decision of the Court of Errors and Appeals of New Jersey was rendered on May 18, 1943 (R., p. 454), and the final decree of that court was filed on May 24, 1943 (R., p. 456).

The petitioner raised the objection to jurisdiction at the very first opportunity in the Court of Chancery, on the motion to strike the bill (R., p. 54), on the opening of the hearing (R., p. 105), on the motion to dismiss (R., p. 194), on the motion for leave to reopen the hearing (R., p. 199), in the objections to the proposed final decree (R., p. 23). The constitutional question was again raised in the petition for appeal to the New Jersey Court of Errors and Appeals (R., p. 7, para. O). The constitutional question was stressed in petitioner's brief before that court and in the petition for reargument. The decision of the New Jersey Court of Errors and Appeals could not have been rendered without deciding the constitutional questions raised by petitioner's brief before that court, and in the petition for reargument.

Questions Presented.

1. May the Court of Chancery of New Jersey by injunction prevent the prosecution of an action at law for breach of contract and for the reasonable value of services which said action at law is exclusively cognizable in the courts of law of New Jersey under the Constitution of the State of New Jersey where there has been no trial of the issues by a court of competent jurisdiction?

2. Does not the restraint of petitioner by injunction from prosecuting his legal claim for services rendered at the special instance and request of the respondent who admittedly received the benefit thereof and who on the hearing in chancery admitted that he did not compensate the petitioner therefor, amount to a deprivation of petitioner's property rights without due process of law and a denial of the equal protection of the laws of the State of New Jersey in violation of the Fourteenth Amendment of the Constitution of the United States?

3. Did not the adjudication by the Court of Chancery

of legal issues which under the New Jersey State Constitution are made exclusively cognizable by the courts of law, amount to a deprivation of petitioner's property rights without due process of law and did not such unconstitutional arbitrary usurpation of jurisdiction by the chancery court deprive the petitioner of due process of law and of the equal protection of the laws of the State of New Jersey in violation of the Fourteenth Amendment of the Constitution of the United States?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The New Jersey Court of Errors and Appeals, the Court of Last Resort of All Causes of the State of New Jersey, by affirming the decree of the Chancellor of the State of New Jersey, has decided an important question of law affecting the property and vested property rights of this petitioner, thereby creating and establishing a law contrary to the rule of the common law and repugnant to and violative of applicable provisions of the Constitution of the State of New Jersey, the Constitution of these United States of America and the decisions of this Honorable Court, to wit:

(a) It amounts to a deprivation of the natural right of this petitioner under the New Jersey State Constitution to prosecute in the law courts of the State of New Jersey his claims for damages for breach of contract and for the reasonable value of services rendered to the respondent at his special instance and request and of which respondent received the benefit and

(b) It deprives this petitioner of his property without due process of law contrary to and in violation of the Fourteenth Amendment of the Constitution of these United States of America, in that the New Jersey Court of Chancery exceeded its jurisdiction under the New Jersey State Constitution and de-

cided legal issues which were exclusively cognizable in the New Jersey Supreme Court wherein an action was and is pending but which action the Court of Chancery, wholly without power and jurisdiction, has perpetually enjoined petitioner from prosecuting.

(c) It deprives the petitioner of the equal protection of the laws of the State of New Jersey, in that he is enjoined, by the arbitrary and unconstitutional decree of the Court of Chancery, from enforcing in the court of law his legal demands for damages for breach of contract and for compensation for his services.

(d) The decision of the Court of Errors and Appeals affirming the decree of the Chancellor which perpetually enjoined the prosecution of petitioner's action at law took away all remedy for the enforcement of a right; it is not within the power of the State of New Jersey so to do. *Poindexter* v. *Greenhow*, 114 U. S. 270; see also 31 L. R. A. 70.

(e) That in the event petitioner is not given relief by the United States Supreme Court, he has no further recourse and will be without a remedy to enforce his legal right to compensation for services rendered upon *quantum meruit*.

(f) The decree of the Court of Chancery enjoining the prosecution of petitioner's prior pending action at law is not due process of law since it was rendered by a court without jurisdiction. "Due process requires that the court which assumes to determine the rights of the parties shall have jurisdiction", *Twining* v. *New Jersey*, 211 U. S. 110, citing *Pennoyer* v. *Neff*, 95 U. S. 714, 733; *Scott* v. *McNeal*, 154 U. S. 34; *Old Wayne Life Association* v. *McDonough*, 204 U. S. 8.

Wherefore, it is respectfully submitted that the within petition for a Writ of Certiorari be granted to the end that this cause may be reviewed and the judgment of the New Jersey Court of Errors and Appeals affirming the decree of the New Jersey Court of Chancery and the decree so affirmed may be reversed by this Honorable Court and that the petitioner may have such other and further relief in the premises as may be just.

August 16, 1943.

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